



REPUBLIC OF KENYA



KENYA LAW
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**Kaguoro & another v Nyaga (Civil Appeal E075 of 2022)
[2025] KEHC 9496 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9496 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E075 OF 2022
JK NG'ARNG'AR, J
JULY 3, 2025**

BETWEEN

GRACE NJERI KAGUORO 1ST APPELLANT

DUNCAN NYAMU KAGUURU 2ND APPELLANT

AND

EVANSON MUNENE NYAGA RESPONDENT

*(Being an appeal against the judgment delivered on 22nd August
2022 at Wang'uru Magistrates Court in Succession 217 of 2016 in the
Estate of Kaguuru Ileri by Hon P.M Mugure Principal Magistrate)*

JUDGMENT

1. The appellants/petitioners filed for summons for confirmation of grant dated 28/2/2020 seeking that the letters of administration intestate of the estate of Kaguuru Ileri (herein deceased) issued to the petitioners on 28/3/2019 be confirmed.
2. The respondent then filed an affidavit of protest to confirmation of grant dated 4/12/2019. It was based on grounds that the deceased had two wives being Grace Njeri Kaguoro and Joyce Wambura Kaguura. That the second wife had five children yet the second house had not been provided for in the list of beneficiaries appearing in the summon for confirmation of grant. The protestor thus prayed that the summons be dismissed and that the deceased's estate be shared equally amongst all the beneficiaries of the two households. The protest relied on the affidavit of marriage dated 18/1/2007 and also attached a copy of title deed to prove the deceased's estate being Gichugu/Settlement/Scheme/877 measuring approximately 14 acres.
3. The petitioners filed a replying affidavit sworn on 16/1/2021 opposing the application on grounds that the deceased only had one wife, Grace Njeri Kaguoro and the affidavit of marriage was forged. That the children listed by the protestor were all strangers with the sir name 'Nyaga'. That the protestor and



- his alleged mother and siblings were not listed in the chief's letter and were therefore not beneficiaries of the deceased and no one made such a claim even during the deceased's funeral.
4. Both parties filed witness statements and documents to buttress their individual case.
 5. The matter proceeded for hearing by way of viva voce evidence. Both the protestor and the petitioners called five witnesses each.
 6. The trial court delivered its judgment on 22/8/2022 upholding the protest and ordered the protestor/respondent to avail a letter from the chief indicating all beneficiaries before further orders on distribution were given.
 7. The petitioners were dissatisfied that judgment and filed the instant appeal vide the memorandum of appeal dated 30/8/2022 based on seven grounds. The petitioners faulted the trial magistrate for; finding that the respondent was the deceased's son despite lack of evidence; considering revocation of a grant in a protest yet the same was not pleaded; relying on an affidavit of marriage that was not produced during the hearing to find that the deceased had two wives; entertained the respondent's siblings yet they did not appear in court; ignored material contradictions in the respondent's case; and disregarded the petitioner's evidence.
 8. Parties were directed to canvas the application vide written submissions. The appellant's were dated 22/7/2024 whereas the respondent's were dated 26/7/2024. I have considered those submissions alongside the pleadings and entire record.

Analysis and Determination

9. I have considered the evidence adduced and submissions filed. The main issue for determination is whether the protestor proved to be a beneficiary of the deceased to justify the revocation of the grant issued to the petitioners. In extension, the issue whether the deceased had two wives calls for determination.
10. The protestor was PW1. He testified that the deceased was his father and there were five children in total. That they all lived in Kamunyange before moving to Difathas in 1978 until the demise of the deceased in 2008. That the children changed their names and adopted their uncle's name, Nyaga, in their certificates and identity card. That the deceased got the plot in 1978 and they built their home thereon but the said land did not have a title deed thus could not be part of the succession. That the deceased had a meat selling business and he paid fees.
11. Counsel for the protestor informed court that the protestor abandoned the affidavit of marriage.
12. PW1 added that he had the original title deed of the deceased's land herein as he was given by the deceased himself in 2006. That the deceased died at home and his body was collected by Grace Njeri Kaguoru.
13. PW2, PW3, PW4 and PW5 all maintained that they knew the deceased well and that he had two wives being Grace Njeri Kaguoro and Joyce Wambura Kaguoro. That he had five children with Joyce. They testified that the deceased had a plot in Difathas alongside other properties. That he died in 2008 when living in Difathas village. PW3 added that Joyce Wambura Kaguoro was from her clan and was well known to her. That the deceased married Joyce in the 1970's as per Kikuyu Customs and they lived in Difathas till his demise and the five children were under his care.
14. PW2 added that he was the one who gave the deceased and Joyce a plot no. 43 to build on and they had all their children there. PW3 testified that he attended the customary ceremony between the deceased and Joyce and that they both moved to Difathas. PW1 and PW5 were both from Difathas Village



- and knew the deceased well. PW5 also testified that the deceased had land in Kamunyange village, Murinduko whether the protestor and his mother Joyce cultivated before they were chased away by the petitioners and relocated to Difathas.
15. PW4 testified that Joyce was her elder sister and had borne five children with the deceased having married in 1975. That the deceased had given Joyce 1 acre, and the protestor 2 acres in his land in Kamunyange in Murinduko. Kirinyaga County and the protestor and his family were utilizing the land until they were chased away by the petitioners. He also added that the childrens' surname 'Nyaga' belonged to their uncle, his brother. That Joyce used the name to take them to school but the deceased took care of them.
 16. DW1 was Grace Njeri Kaguuru. She maintained that she was the only wife to the deceased and they had eight children. She produced the petitioner's statements as DEXH1-4. That the protestor and Joyce Wambura Kaguoru were strangers to her. That she went to the police to report loss of title deed for Gichugu Scheme 877 which got lost after the deceased died and she did not know the person who had the title. She confirmed that she lived in Murinduko Kamunyange and did not know whether the deceased was living with Joyce.
 17. DW2, DW3, DW4 and DW5 all maintained that the deceased had one wife, Grace and they did not know of any other wife nor had they lived with another family in Murinduko.
 18. Considering the foregoing, I do find that the protestor and his witnesses were all consistent in their narration that the deceased initially lived in Muriunduko Village before moving to Difathas village where he lived with Joyce as his wife and their five children until his demise. DW4 corroborated the protestor's contention that the deceased moved to Difatha's and left behind Grace and her children. He testified that he would visit the deceased in Difathas. PW5 also testified that the deceased had land in Kamunyange village, Murinduko where the protestor and his mother Joyce cultivated before they were chased away by the petitioners and relocated to Difathas. I find that Joyce qualified as a defendant under Section 24 of the Succession Act noting that the customary marriage between her and the deceased was witnessed by PW4, and the two openly lived as husband and wife in Difathas and had 5 children from the union.
 19. There was also the issue of the original title deed. Though DW1 and DW2 testified that the original title deed got lost after the demise of the deceased, it turned out that the same was held by the protestor who testified that the deceased, his father, gave it to him after the sons borne by Grace beat him in 2006 and chased away Joyce and her children. This was collaborated by PW4 and PW5.
 20. I do not accept that the deceased would have given a total stranger to his family the original title to his 14-acre land. The petitioner's allegation that the protestor was a stranger to the deceased cannot hold. Further, I do note that the said Joyce also holds the deceased's name being Joyce Wambuura Kaguoro. DW2 testified that she indeed held the deceased's name. I am not convinced that Joyce was a stranger to the deceased's estate. In any case, there was a live witness, PW4, who attended the customary marriage between the deceased and Joyce. PW2 testified that he personally knew the deceased and Joyce as he was the one who gave them the plot in Difathas where he settled with his Joyce. Though the petitioners denied knowing the protestor, he testified that the deceased died in the house in Difathas and his body was collected by Grace, his first wife, who was given the burial permit. I do take judicial notice that the petitioner's did not testify about where the deceased lived at the time of his death.
 21. I also note that the protestors witnesses all explained how they knew both the deceased and Joyce, noting that they either hailed from Difathas where the deceased lived with Joyce, or they were related to Joyce. It then follows that on a balance of probabilities, the protestor proved that the deceased had



married Joyce who bore 5 children with the deceased and they lived in Difathas Village. Consequently, the protestor established his relationship with the deceased.

22. I do however agree with the petitioners that the trial court ought not to have relied on the affidavit of marriage noting that the same was abandoned by the protestor. However, the trial court was correct in finding that the protestor and his family ought to have been included in the list of beneficiaries on the basis of the evidence of PW1-PW5.
23. As to whether the trial court erred in revoking the grant despite that none of the parties sought such a prayer, I find the same in the negative. Section 76 of the *Law of Succession Act* Cap 160 Laws of Kenya provides as follows: -

“A grant of representation, whether or not confirmed may at any time be revoked or annulled if the court decides, either on application by any Interested Party of its own motion –

- i. that the proceedings to obtain the grant were defective in substance;
- ii. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- iii. that the grant was obtained by means of an untrue allegation of a fact essential in point in law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- iv. that the person to whom the grant was made has failed, after due notice and without reasonable cause either -i.to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; orii.to proceed diligently with the administration of the estate; oriii.to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of Section 83 or has produced any such inventory or account which is false in any material particular; or
- v. that the grant has become useless and inoperative through subsequent circumstances.

24. Section 76 was well articulated by the court In re Estate of Prisca Ong’ayo Nande (Deceased) [2020] eKLR where it was stated that: -

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with



administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

25. Noting that the petitioners left out the 2nd house of Joyce Wambura Kaguoro in the list of the deceased’s beneficiaries, the grant could not have been confirmed and the same was lawfully revoked.
26. In the end, I find that the judgment of the court and the directions given therein were lawful and the same are hereby upheld. The chief’s letter is important for the proper identification of the children in the 2nd house. The respondent/protestor herein is directed to comply with the said judgment to enable the final determination of the matter before the trial court. To effect that purpose, the Deputy Register is herein ordered to transfer back the file to the lower court within 14 days of this judgment.
27. The upshot is the instant appeal is found to lack merit and the same is hereby dismissed.
28. Each party shall bear its own costs.

It is so ordered

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF JULY 2025
IN THE PRESENCE OF;**

Mureithi for the Appellants

Ombachi for the Respondents

Siele /Mark (Court Assistants)

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HON. J. NG’ARNG’AR

JUDGE

